From:	LERS, EOIR (EOIR)
To:	All of CLAD (EOIR); All of Judges (EOIR); All of OCIJ JLC (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Barry, Robert (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA ATTORNEYS (EOIR); BIA BOARD MEMBERS (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Calvert, Irvina (EOIR); Cardenas, Lupe (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Crossley, Maurice (EOIR); Cudo, Relanie (EOIR); Curry, Michelle (EOIR); D"Angelo, Matthew (EOIR); Evans, Brianna (EOIR); Friedman, Paul (EOIR); Gonzalez, Robert (EOIR); Grodin, Edward (EOIR); Hammond, Nicole (EOIR); Hartman, Alexander (EOIR); Hess, Chris (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); LERS, EOIR (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Mitchell, Carla (EOIR); Morteo, Cristina (EOIR); Noferi, Mark (EOIR); Nunez, Steven (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Podgorski, Monika (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Santoro, Christopher A (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc:	McHenry, James (EOIR); Reilly, Katherine (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Alder Reid, Lauren (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Macri, Andrea (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR)
Subject:	Policy & Case Law Bulletin - November 16, 2018
Date:	Friday, November 16, 2018 9:03:57 PM

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
November 16, 2018

Federal Agencies

DOJ

EOIR Director Issues PM 19-04 on Tracking and Expedition of "Family Unit" Cases — EOIR

The policy memorandum issued on November 16, 2018, clarifies the agency's tracking and expedition of "family unit" cases, as identified by the DHS at the time of filing with the immigration court.

EOIR Director Issues PM 19-03 on Guidance Regarding the Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States — EOIR

The policy memorandum issued on November 13, 2018, provides guidance regarding the Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States.

Virtual Law Library Weekly Update — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

USCIS Issues Policy Memorandum on Guidance for Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption

On November 9, 2018, USCIS issued a policy memorandum (PM), "amend[ing] the Adjudicator's Field Manual (AFM) to provide guidance on issues related to prospective adoptive parent (PAP) suitability that may arise when adjudicating intercountry adoption cases." This PM applies to all USCIS employees.

USCIS Issues Procedural Guidance for Implementing Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry under Certain Presidential Proclamations

On November 9, 2018, USCIS issued a memorandum that "provides USCIS asylum officers with guidance for considering and processing claims of asylum, statutory withholding of removal, and protection under the Convention Against Torture (CAT), including in the credible fear context, to conform to the Interim Final Rule (IFR), Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018)."

DOL

USDA Releases 2018 Farm Labor Survey

"On November 15, 2018, the USDA issued the Farm Labor Survey (FLS) report in which it established the average annual wage rates, by region and the United States, for field and livestock workers. The DOL relies on the average annual combined hourly wage for field and livestock workers in order to establish the Adverse Effect Wage Rates (AEWR) in the H-2A program." The DOL indicated that it is "reviewing the USDA FLS average annual wage rates for 2019 and will soon publish a notice in the Federal Register announcing new AEWRs for each state."

H-2A and H-2B Notices of Proposed Rulemaking

On November 14, 2018, "the DOL published a notice of proposed rulemaking (NPRM) in the Federal Register proposing to modernize the advertising requirements for the H-2A [temporary agricultural worker] program. DOL also published, jointly with the Department of Homeland Security, a separate NPRM proposing to modernize the advertising requirements for the H-2B [temporary non-agricultural worker] program."

ETA Announces iCERT Enhancements to Improve Customer Service

On November 13, 2018, the Employment & Training Administration (ETA) implemented new enhancements to the iCERT system related to the submission of applications for temporary labor certification under the H-2A and H-2B visa programs. The DOL indicated that "[t]hese enhancements are intended to improve customer service and increase the quality of applications submitted for processing."

DOS

DOS Posts December Visa Bulletin

The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

DOS Update on Latvia's New Regulations Regarding Intercountry Adoption

"The U.S. Embassy in Riga has confirmed that [Latvia] promulgated new regulations on intercountry adoption on October 30, 2018, with an effective date of November 8, 2018. The new regulations will limit intercountry adoption to children in three groups: 1) children living in institutions, for whom an adoptive family in Latvia cannot be found; 2) stepchildren of prospective adoptive parents; and 3) children from foster care, if the adoptive child is related to the prospective adoptive parents. The new regulations will also impose stricter requirements on accredited adoption service providers (ASPs) and require more extensive pre-adoption training programs, including classroom and practical training hours."

Notice in the Designation as FTO of Hizballah

On November 14, 2018, notice was published in the Federal Register that the Secretary of State will continue to maintain the designation of Hizballah (and other aliases) as a Foreign Terrorist Organization (FTO) pursuant to the Act.

Notices in the Matters of the Designation of Al-Mujahidin Brigades and Jawad Nasrallah as SDGT

On November 14, 2018, notice was published in the Federal Register that the Secretary of State designated Al-Mujahidin Brigades, also known as Khatib Al-Mujahidin, Holy Warriors Battalion, Al Mujahideen Brigades, and Ansar al-Mujahidin Movement, as a Specially Designated Global Terrorist (SDGT) in accordance with Executive Order 13224. On the same date, notice was published in the Federal Register that the Secretary of State designated Jawad Nasrallah, also known as Mohammad Jawad Nasrallah and Juad Nasrallah, as a SDGT in accordance with Executive Order 13224.

First Circuit

Avelar Gonzalez v. Whitaker

No. 18-1122, 2018 WL 5993573 (1st Cir. Nov. 15, 2018) (Corroboration)

The First Circuit denied the PFR, holding that there is substantial evidence to support the determination that Avelar-Gonzalez did not provide adequate corroboration for crucial elements of his asylum claims. The court determined that it was reasonable for the IJ to require corroboration without making an adverse credibility determination. Furthermore, it was reasonable for the IJ to conclude that some further corroborating evidence should have been available given that Avelar-Gonzalez provided other documentary evidence in support of his application, he could not provide an explanation as to why no further corroboration was available, and he filed an updated application nearly five years after entering the United States, giving him ample time to include corroborating evidence.

Fifth Circuit

Okpala v. Whitaker

No. 17-60391, 2018 WL 5988472 (5th Cir. Nov. 15, 2018) (Denaturalization)

The Fifth Circuit granted the PFR, applying Costello v. INS, 376 U.S. 120 (1964), to hold that Okpala is not subject to deportation under 8 U.S.C. § 1227(a)(2)(A)(iii) because he was a naturalized citizen at the time he was convicted of his crimes, even though he was subsequently denaturalized ab initio for material falsehoods on his naturalization application. The circuit court also held that the doctrines of collateral estoppel and res judicata did not foreclose DHS from initiating removal proceedings against Okpala, where immigration proceedings were closed for 20 years while Okpala served his criminal sentence. Finally, the court concluded Okpala was collaterally estopped from challenging the validity of his denaturalization order and his drug convictions in removal proceedings, where his convictions were affirmed on direct appeal and the Supreme Court denied certiorari, and denaturalization was mandated by statute.

Ninth Circuit

J.E.F.M. v. Whitaker

No. 15-35738, 2018 WL 5989070 (9th Cir. Nov. 13, 2018) (Right to Counsel)

The Ninth Circuit denied the petition for rehearing en banc of J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016), where the panel held that a district court does not have jurisdiction over a claim that indigent minor immigrants, without counsel, have a right to government-appointed counsel in removal proceedings. A published dissenting opinion from the brief denial of rehearing en banc argues that the panel was wrong for two reasons. First, the dissent contends that the plain language of the statute, Ninth Circuit case law, and Supreme Court precedent all indicate that 8 U.S.C. § 1252(b)(9) bars district court review of a claim only where an order of removal has been entered and an individual seeks relief from that order. Because the immigration proceedings involving the class of children have not reached that stage, the dissent would find no statutory barrier to allowing this case to go forward. Second, the dissent contends that the panel's "expansive reading of 8 U.S.C. § 1252(b)(9) severely hampers meaningful judicial review of the children's right-to-counsel claims" because many unrepresented minors "will likely never make it to the court of appeals . . . [or] will arrive there without the factual record necessary to demonstrate the importance of counsel."

Guerrero v. Whitaker

No. 15-72080, 2018 WL 5852651 (9th Cir. Nov. 9, 2018) (Particularly Serious Crime)

The Ninth Circuit granted in part and denied in part the PFR, holding that the phrase "particularly serious crime" is not unconstitutionally vague. The court determined that its previous decision in Alphonsus v. Holder, 705 F.3d 1031 (9th Cir. 2013), is irreconcilable with Johnson v. United States, 135 S. Ct. 2551 (2015), and Sessions v. Dimaya, 138 S. Ct. 1204 (2018). Thus, it needed to address the issue anew. In doing so, the circuit court acknowledged that the statute provides an uncertain standard, but that uncertainty does not render the statute unconstitutionally vague, especially when it is only applied to real-world facts and not idealized crimes.

Menendez v. Whitaker

No. 14-72730, 2018 WL 5832974 (9th Cir. Nov. 8, 2018) (CIMT; Child Abuse)

The Ninth Circuit granted Menendez's and Rodriguez's PFRs and remanded both cases to the Board. The court held that Cal. Penal Code § 288(c)(1) (committing lewd and lascivious acts upon a 14 or

15-year-old child) is not a categorical crime involving moral turpitude because the statute does not require evil or malicious intent, an intent to injure, or an actual injury. Although the court acknowledged that the statute involves a protected class of victims, the court rejected the notion that all criminal statutes intended to protect minors establish crimes involving moral turpitude. Relying on the Board's definition of "crime of child abuse" as set out in Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008), and Matter of Soram, 25 I&N Dec. 378 (BIA 2010), the court further held that section 288(c)(1) is broader than the generic definition because it does not require a defendant to act with a mens rea of at least criminal negligence, and it does not require proof of actual injury or a sufficiently high risk of harm.